

IN THE SUPREME COURT OF THE STATE OF DELAWARE

EARLE MOORE,	§	
	§	No. 597, 2009
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 0812010704
Appellee.	§	

Submitted: October 29, 2009
Decided: November 4, 2009

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

ORDER

This 4th day of November 2009, upon consideration of the Clerk’s notice to show cause, the appellant’s response to the notice, and the appellee’s answer to the response to the notice, it appears to the Court that:

(1) On September 2, 2009, the appellant, Earle Moore, was sentenced on a finding that he had violated the probation (“VOP”) related to his felony drug conviction. On October 13, 2009, Moore filed a *pro se* notice of appeal from the VOP adjudication and sentence.

(2) On October 13, 2009, the Clerk issued a notice directing that Moore show cause why the appeal should not be dismissed as untimely filed. In his response to the notice, Moore indicates that he was represented by

counsel at the VOP hearing, and that he had asked his counsel to file an appeal on his behalf. Moore asserts that his appeal should not be dismissed because the failure to timely file the notice of appeal was not his fault.

(3) In its answer to Moore's response to the notice to show cause, the appellee, State of Delaware, suggests that, under these circumstances, the matter should be remanded to the Superior Court with instructions to vacate the September 2, 2009 VOP sentence and to resentence Moore with the assistance of counsel.¹ The State's suggestion is well-taken. In the interest of justice, we conclude that this matter should be remanded to the Superior Court for resentencing of Moore, with the assistance of counsel, so that Moore may be given the opportunity to file a timely direct appeal.²

NOW, THEREFORE, IT IS ORDERED that this matter is REMANDED to the Superior Court with instructions to vacate the September 2, 2009 VOP sentence and to resentence the appellant, Earle Moore, with the assistance of counsel. Jurisdiction is not retained.

BY THE COURT:

/s/ Jack B. Jacobs
Justice

¹ *Harris v. State*, 2007 WL 1933161 (Del. Supr.).

² *Id.*